

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Docket No.: 07 CIV 10590

-----x **ELECTRONICALLY SUBMITTED**

DURAVEST, INC.,

Plaintiff,

NOTICE OF MOTION

-against-

Returnable: May 16, 2008

VISCARDI, AG; WOLLMUTH, MAHER &
DEUTSCH LLP.; MASON H. DRAKE,
ESQ.; BRUCE O'DONNELL, CPA/PFS, P.A.;
RICHARD MARKOLL, BIOMEDICAL
CONSULTANT SL; and ERNESTINE BINDER
MARKOLL;

-----x

PLEASE TAKE NOTICE, that upon the accompanying Declaration of Barry Jacobs and Memorandum of Law, defendants WOLLMUTH MAHER & DEUTSCH LLP and MASON H. DRAKE, ESQ. (hereinafter referred to as "WMD" and "Drake") shall move this Court, before the Honorable Jed S. Rakoff, United States District Judge, at the United States Courthouse, 500 Pearl Street, New York, New York, on May 16, 2008 at 4:00 p.m. to dismiss plaintiff's single claim against Wollmuth Maher & Deutsch LLP and Mason H. Drake, Esq. for lack of the subject matter jurisdiction, pursuant to FRCP 12(b)(1) and 28 U.S.C. §1367, and for such other and further relief as this Court deems just and proper.

As set forth in the accompanying Memorandum of Law, this Court does not have subject matter jurisdiction over the single claim interposed by Duravest, Inc. against Wollmuth Maher & Deutsch LLP and Mason H. Drake, Esq., because the claim does not arise out of the same case or controversy which according to plaintiff, has vested this Court with original jurisdiction, and as a result, does not fall within the purview of this Court's supplemental jurisdiction, as defined by 28 U.S.C. §1367.

PLEASE TAKE FURTHER NOTICE, pursuant to the Court's directives, answering papers, if any, shall be served no later than April 28, 2008, reply papers, if any, shall be served no later than May 5, 2008, and oral argument is scheduled for May 16, 2008 at 4:00 p.m.

Executed on: New York, New York
April 7, 2008

Respectfully submitted,

ABRAMS, GORELICK, FRIEDMAN &
JACOBSON, PC

By: 

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